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SUMMARY RECORD OF THE 1957th MEETING

Held at the Palais Wilson, Geneva,
on Monday, 15 October 2001, at 3 p.m.

Chairperson: Mr. BHAGWATI

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The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 5)

Fifth periodic report of Ukraine (CCPR/C/UKR/99/5; CCPR/C/73/L/UKR)

1. At the invitation of the Chairperson, the members of the delegation of Ukraine took places at the Committee table.

2. Mr. PASENIUK (Ukraine) said that socio-economic trends in Ukraine had continued to improve since the submission of the country's fifth periodic report (CCPR/C/UKR/99/5).

3. On 28 June 1996, Ukraine had adopted a new Constitution that fully reflected the provisions of the Covenant and provided strong protection for basic human rights such as the right to life, the right to work, education, housing and leisure, and the right to due process of law. Article 21 of the Constitution stated that human rights and freedoms were inalienable and inviolable, and article 22 that the rights and freedoms enshrined in the Constitution were not exhaustive. Ukraine was currently supplementing its national legislation and reforming the machinery of government with a view to building stronger defences against violations of human rights. The Office of the Ombudsman submitted reports to the Supreme Council of Ukraine (the parliament) on the human rights situation in the country. A Constitutional Court had been established and new legislation concerning refugees, citizenship, immigration and many other issues had been enacted.

4. A Council on Reform of the Judicial System had been established by presidential decree. A Penal Code had been adopted in April 2001 and the Code of Civil Procedure, the Code of Commercial Procedure and other legislative enactments had been substantially amended. A system of appeal courts had been established, and amendments to the procedure for authorizing police custody and pre-trial detention and to the regulations governing searches had been adopted on 28 July 2001. The prerogatives previously enjoyed by the Procurator's Office in that regard had been withdrawn and jurisdiction had been transferred to the courts. The reform process would entail an increase of almost 100 per cent in the number of judges presiding over local courts.

5. The Ukrainian authorities were aware that, notwithstanding the scale of legislative and other reforms to date, a great deal remained to be done in order to ensure full compliance with international norms. To that end, the Committee's recommendations would be carefully studied with a view to their early implementation.

6. The CHAIRPERSON invited the delegation of Ukraine to reply to the list of issues (CCPR/C/73/L/UKR), which read:

"Constitutional and legal framework within which the Covenant is implemented and permissible derogations in time of public emergency (arts. 2 and 4)

1. What changes are envisaged in the new Constitution regarding the protection of Covenant rights, in particular those referred to in article 55 (paras. 31-35 of the report)?

2. What is the status of Covenant rights in the legal system in force in the State party?

3. What measures has the State party adopted to implement the views of the Human Rights Committee under the Optional Protocol and to implement the Committee's concluding observations?

4. Please provide information on the functioning of the Office of the Ombudsman and the number of complaints received since it began to function.

5. Please provide information on the legal norms concerning states of emergency and their conformity with article 4 of the Covenant.

Non-discrimination, prohibition of advocacy of hatred and protection of minorities (arts. 2, 20, 25-27)

6. Please comment on the implementation of articles 26 and 27 in relation to ethnic groups, especially the Roma.

7. Please comment specifically on the situation of the Crimean Tartars, who are reportedly unable to participate fully in the political process, notably because of denial of citizenship to many of them.

Gender equality (art. 3)

8. What measures are being taken to enhance the status of women in public life, particularly in the political area and public service? Please provide further information on the participation of women in the economic sector and measures to ensure equal pay for men and women.

9. What measures are being taken by the State party to combat violence against women, including domestic violence and rape (para. 154 of the report)?

The right to life (art. 6)

10. Please provide information about the draft Penal Code, which has been before the Supreme Council (paras. 81-91 of the report). Please comment on any relevant judgements, if appropriate.

Prohibition of slavery (art. 8)

11. In the light of reports that a significant number of women and girls are subjected to trafficking for purposes of prostitution, please indicate what measures the State party has taken to combat these practices (para. 153).

Prohibition of torture and other cruel, inhuman or degrading treatment or punishment; liberty and security of person; humane treatment; right to a fair trial (arts. 7, 9, 10 and 14)

12. What mechanisms exist for investigation into complaints concerning torture and ill-treatment committed by police officers, officials of the Ministry of Internal Affairs, security forces and prison officials (paras. 130 and131)?

13. Please explain what measures have been adopted to prevent excessive use of force by the police, including arbitrary detention and other abuses. Please give details about the prosecution of police officers accused of such acts.

14. Given the large number of prisoners in pre-trial detention, please explain whether the law and practice of Ukraine is in conformity with the provisions of article 9 of the Covenant. What is the average duration of pre-trial detention?

15. Please explain the nature and the competence of the body of inquiry mentioned in paragraph 174 of the report and whether its procedures are in conformity with article 9, paragraph 3, of the Covenant.

16. Please give details concerning the present conditions of detention in prisons and other places of detention. What measures are being taken by the State party to ensure compliance with article 10 of the Covenant? Please provide statistics on the prison population, average cell occupancy and the percentage of convicted prisoners in relation to non-convicted prisoners.

17. In relation to paragraph 225 of the report, what measures are being taken to ensure compliance with article 10, paragraph 3, with respect to juvenile offenders?

Freedom of movement and protection of aliens (arts. 12 and 13)

18. Please explain whether the system of internal permits ("propiska") is still in effect, in law or in practice. If it remains in effect, are measures envisaged to abolish it?

19. Is the principle of non-refoulement respected in practice in the State party for individuals seeking asylum?

20. Is the system of exit visas mentioned in paragraph 279 of the report consistent with article 12, paragraph 2, of the Covenant?

21. Concerning paragraph 295 of the report, please explain the procedures governing appeals against an expulsion order, which courts are competent to deal with such appeals and whether appellants are entitled to legal aid for the purpose.

Privacy (art. 17)

22. Please elaborate on the restrictions on freedom and privacy of correspondence and all other forms of communication that are provided by law for the protection of State security and the conduct of criminal proceedings (paras. 405 and 407).

Freedom of thought, conscience and religion (art. 18)

23. Please give information on the requirements for registration of religious organizations and the implications of these requirements, if they exist, for the provisions of article 18 of the Covenant (paras. 439, 440, 450, 456, 460 and 465).

Freedom of opinion and expression (art. 19)

24. Please explain how the very broad possible restrictions on the right of freedom of expression and opinion referred to in paragraphs 497, 499 and 510 of the report are considered compatible with article 19 of the Covenant.

Freedom of assembly (art. 21); and association (art. 22)

25. Please explain how the restrictions that may be imposed on the exercise of the right to freedom of assembly (paras. 530 and 535) and of the right to freedom of association (paras. 542, 546 and 567) are considered compatible with articles 21 and 22 of the Covenant, respectively.

The family and the rights of the child (arts. 23 and 24)

26. With reference to paragraph 623 of the report, please provide further information on measures taken to ensure compliance with articles 23 and 24 of the Covenant, especially as far as vulnerable children are concerned.

Participation in the conduct of public affairs (art. 25)

27. Please indicate whether there are any restrictions on the right to form political parties and to take part and vote in periodic elections (paras. 680 and 687).

Dissemination of information relating to the Covenant (art. 2) and the Optional Protocol

28. Please indicate the steps taken to disseminate information on the submission of reports and their consideration by the Committee, and in particular on the Committee's

concluding observations. Please also provide information on education and training on the Covenant (art. 2) and its Optional Protocol provided to all categories of public officials, in particular to schoolteachers, judges, lawyers and police officials."

7. Mr. PASENIUK (Ukraine), in reply to question 1, said that all the rights protected by the new Constitution corresponded to those recognized in the Covenant. Under article 55 of the Constitution, all human rights and freedoms were protected by the courts and everyone was guaranteed the right to challenge administrative decisions in the courts. Many individuals had exercised that right. The new judicial system was based on district courts, appeal courts and courts of cassation. There were plans to establish administrative courts to address complaints by individuals against officials and State bodies. Complaints could also be lodged with the Office of the Ombudsman, which had been established three years previously. Once domestic remedies had been exhausted, everyone had the right to appeal to international judicial bodies or other relevant bodies of international organizations of which Ukraine was a member.

8. Mr. DEMCHENKO (Ukraine), in reply to question 2, said that the 1996 Constitution corresponded very closely to the provisions of the Covenant. Articles 1, 3, 4 and 5 covered all the provisions of article 1, paragraph 1, of the Covenant concerning self-determination, free determination of political status, and free pursuit of economic, social and cultural development. Articles 13 and 14 covered the provisions of article 1, paragraph 2, of the Covenant concerning the free disposal of natural wealth and resources. Articles 24 and 26 provided all the guarantees of non-discrimination set forth in article 2, paragraph 1, of the Covenant. In particular, article 24 guaranteed full equality for men and women in terms of both civil and political rights, and economic, social and cultural rights. Article 9 stipulated that international treaties ratified by Ukraine, including the Covenant, formed part of domestic legislation. Article 27 of the Constitution guaranteed the right to life. On 4 April 2000, Ukraine had ratified Protocol No. 6 to the European Convention on Human Rights concerning the abolition of the death penalty and the new Penal Code contained no offence punishable by the death penalty. Article 28 of the Constitution prohibited torture and cruel, inhuman or degrading treatment or punishment. Article 43 guaranteed the right to work and prohibited forced labour. The procedures governing arrest and detention in Ukraine, in particular the amended Code of Criminal Procedure, met all the requirements of article 9 of the Covenant. Article 28 of the Constitution guaranteed respect for the inherent dignity of the human person. Article 33 guaranteed freedom of movement and free choice of place of residence for all persons legally present on the territory of Ukraine. Article 29 guaranteed the right to liberty and security of person. No one could be held in pre-trial detention other than by a court decision and in accordance with the procedure established by law. Article 32 of the Constitution prohibited interference in an individual's personal or family life. Parliament had adopted a Family Code as part of the new Civil Code. Article 34 of the Constitution guaranteed freedom of thought, speech and expression, article 47 prohibited propaganda for war, article 39 guaranteed the right of peaceful assembly and article 36 established the right to freedom of association. Article 38 guaranteed the right to participate in the conduct of public affairs, individually or through representatives elected to the bodies of State power and local self-government. Article 32 guaranteed citizens equal protection of the law. Article 11 of the Constitution and a separate legislative enactment protected the rights of national minorities in Ukraine.

9. Mr. PASENIUK (Ukraine), in reply to question 3, said that the Committee's Views under the Optional Protocol and its concluding observations were being implemented. In accordance with the Committee's recommendations, a process of administrative reform was under way and had led to the establishment of the Office of the Ombudsman and the Constitutional Court. Women played an active role in economic, political and social affairs, and effective action was being taken to prevent domestic violence. The death penalty had been abolished. Many offences in the Penal Code no longer carried a custodial penalty. In 2000, the President had established a committee to oversee reform of the country's law enforcement bodies, including the police, the Office of the Procurator and the security forces. Steps had been taken to make the justice system as accessible as possible to the general public. Ukrainian legislation on refugees and immigration was being amended.

10. Ms. KARPACHOVA (Ukraine), in reply to question 4, said that the legislation establishing the Office of the Ombudsman had taken into account not only Ukraine's cultural and legal traditions in the area of human rights protection, but also corresponding legislation in other countries such as the United Kingdom, Finland, Norway, Sweden, Poland and Hungary. Articles 55 and 101 of the Constitution recognized the Office as an independent institution. The Ombudsman, who could not be affiliated to a political party, was elected by parliament for a five-year term and enjoyed broad supervisory jurisdiction over government bodies and local authorities. Ukrainian citizens and foreigners, including refugees and asylum-seekers, had direct access to the Office. The authorities had initially failed to appreciate the nature of the Ombudsman's duties and had not provided the financial assistance that the Office required to discharge its functions effectively.

11. More than 186,000 complaints had been filed by citizens, groups of citizens and non-citizens over the past three years. Members of the public were freely admitted to the Office seven days a week. The Office's 67 employees included economists and journalists. A secure telephone hotline and a line offering advice on human rights had been established. Although only written complaints were admissible by law, oral complaints had also been accepted. Staff members travelled to remote parts of the country to hear complaints. Funding had first been provided in December 1998 - eight months after the establishment of the Office - and was sufficient to meet only about 33 per cent of the Office's requirements. That percentage had risen by a few points in the meantime, but the Office would be unable to operate without the assistance of international organizations and Ukrainians living abroad. However, the authorities, particularly the Ministries of Justice and Foreign Affairs, had begun to appreciate the importance of the Ombudsman's work. The Office had published its first report on the human rights situation in the light of the international treaties ratified by the Ukraine and two bulletins describing the activities of the Ombudsman's Office had been published with the assistance of the Council of Europe and United Nations offices in Ukraine.

12. Mr. PASENIUK (Ukraine), in reply to question 5, said that a state of emergency could be declared in Ukraine in response to an attack on the country's territorial integrity or the constitutional order or in the event of a natural disaster or epidemic. The legislation governing states of emergency had been adopted immediately after the country had obtained its independence in 1992 and had been amended in 2000 in the light of international instruments. A state of emergency of limited duration could be declared by the President but parliamentary approval was required. Certain human rights and freedoms could be restricted in such

circumstances: the rights of non-citizens, freedom of correspondence, the secrecy of telephone conversations, freedom to choose one's place of residence and to leave the country without hindrance, the right to freedom of expression, religion and belief, the right to form a political party, the right to participate in national and local referendums, the right to strike and the right of peaceful assembly. The basic rights and freedoms enshrined in the Covenant and the Constitution could not be restricted, for example the right to life, the right to respect for the dignity of the human person, the right to liberty and security of person, and children's rights.

13. Mr. GARNIK (Ukraine), replying to question 6, said that under the Constitution all Ukrainians enjoyed equal rights and freedoms, which were inviolable. Everyone was equal before the law, regardless of colour, political belief, gender, ethnic origin, social background, financial circumstances or language, and Ukrainian citizens could not be deprived of their citizenship or extradited. All foreigners and non-citizens lawfully residing in Ukraine enjoyed the same rights and freedoms as Ukrainian citizens, with the exceptions allowed under the Constitution, laws or international treaties concluded by Ukraine. Foreigners and stateless persons could be granted asylum under a procedure established in law.

14. The various Roma groups living in Ukraine comprised almost 48,000 people, a quarter of whom lived in the Transcarpathia region. In order to address the basic problems of raising the educational level of young Romas and offering them employment opportunities, most schools in Mukachevo, where the largest single Roma community lived, taught only in their native language. Other towns of the region offered Sunday schools, museums and cultural centres. Since 1999, a cultural organization called "Tigan-skaya Vatra" had published a newspaper in the region in the Ukrainian and Roma languages, also establishing a Roma cultural centre, a museum, nursery schools and a legal centre. In Kiev, the "Forum Roma Ukrainy" had established a Roma archive and legal centre with the support of the Gypsy Family Union and the Council of Europe. All those initiatives provided tangible proof of the efforts made in Ukraine to avoid discrimination against the Roma people.

15. Turning to question 7, he noted that the Procurator-General and local authorities had been obliged to introduce a range of measures in an effort to address the increased levels of crime, disease and illegal employment, refugee movements and illegal immigration arising in connection with the situation of the Crimean Tartars. Simplification of the procedures allowing foreigners to remain in Ukraine without compulsory checks had encouraged nationals of several former Soviet republics to try to use Ukraine as a stepping-stone towards eventual illegal immigration into western Europe. Against that background, the authorities were struggling to resettle the 260,000 Crimean Tartars who had returned to Ukraine independently, as well as smaller numbers of Bulgarians, Greeks and Germans; it must also be assumed that the remaining 250,000 Crimean Tartars still living in other countries wished to return. According to figures from the Ministry of Internal Affairs, some 13 per cent of the Crimean Tartars in Ukraine wished to reside in the Crimean Autonomous Republic, and 10 per cent of the total now lived there already, retaining the status of foreigner. The Ukrainian Cabinet of Ministers had introduced a number of ordinances and regulations intended to address the issues relating to the Autonomous Republic of Crimea. A resettlement programme was being implemented, covering four areas: socio-economic matters, political and legal affairs, international assistance and humanitarian

issues. In particular, State loans for house building had been made available to Crimean Tartars and other nationalities living in the autonomous area. There were now two Tartar deputies in the Ukrainian parliament.

16. Mr. PASENIUK (Ukraine) added that a special parliamentary commission had been set up to supervise implementation of a five-year programme, starting in 2001, designed to expedite the reintegration of Tartars, and others such as Bulgarians, Greeks and Germans, who had been deported. Unfortunately, owing to Ukraine's economic difficulties the Government had not been able to provide all the funds needed to set up the planned multi-ethnic educational and cultural centres.

17. Mr. GARNIK (Ukraine), in reply to question 8, said that article 24 of the Ukrainian Constitution guaranteed equal rights for men and women, notably with regard to public policy, cultural activities, education, vocational training, work, remuneration, health and pensions. In Ukraine, all the conditions were in place to enable women to combine work and motherhood without prejudice to themselves or their children. Women also played a full part in social, cultural and political life. Since the previous parliament, the number of women deputies had doubled to 38, representing 8 per cent of total membership.

18. Under Ukraine's Labour Code, both sexes enjoyed the unhindered right to dispose of their own property and to use their own creative resources for productive work. Articles 174 and 185-189 of the Labour Code contained specific provisions designed to protect women in a range of work-related situations liable to harm them or their present or future children. They included a ban on hard labour, dangerous work, underground work and the moving of heavy objects. Limitations were placed on night work by women, on the employment of pregnant women at night and on overtime. Special working conditions applied to mothers with disabled children, and women transferred to lighter duties were entitled to retain their previous salary. Pregnant women were entitled to 70 days' maternity leave before birth and 56 afterwards, and an extension could be granted to those who already had two or more children. Women with two or more young children or disabled children were entitled to five days' additional paid leave per annum. Under article 149 of the Labour Code, pregnant women or women with children aged under 14 or disabled children could not be ordered to work, dismissed or forced to accept a lower wage for reasons relating to their domestic situation.

19. Ms. KARPACHOVA (Ukraine) added that in 1980, while still a part of the Soviet Union, Ukraine had ratified the Convention on the Elimination of All Forms of Discrimination against Women. However, women still rarely occupied senior political and judicial posts: there was currently one woman in the Cabinet, and 2 out of 18 judges in the Constitutional Court were women. Moreover, women occupied only 14 per cent of higher civil service posts, although at the national level a greater proportion of women than men had attained intermediate and higher educational qualifications. Nevertheless, the Government had introduced several programmes intended to increase women's representation at senior governmental level, and substantial progress had been made within the civil service as a whole, where over 50 per cent of posts were now occupied by women.

20. Mr. GARNIK (Ukraine), in reply to question 9, said that Ukrainian law treated all cases of violence against women as aggravated offences. Rapists and persons forcing women to indulge in sexual relations were criminally liable; in the event of a resulting serious injury to the woman, the perpetrator could be imprisoned for a term of 8-15 years. The Penal Code now provided for long terms of imprisonment for all offences involving violence against women, rape and enforced prostitution. A bill on the prevention of violence in the family was currently undergoing its second reading in parliament.

21. Mr. PASENIUK (Ukraine), replying to question 10, said that all the rights relating to article 6 of the Covenant had been incorporated into his country's Constitution. They formed the basis of the new Penal Code adopted and brought into force in 2001. While the new Code still mainly preserved the criminal-law institutions introduced under the 1985 Code, it now also reflected the major changes in judicial practice which had occurred since then, and had also taken on a less punitive aspect through the incorporation of the relevant international instruments ratified by Ukraine and relevant parts of the new Constitution.

22. The outstanding achievement of the new Penal Code was the abolition of the death penalty. Its replacement by life imprisonment had only come about in 1999, following a long process which had culminated in the Constitutional Court's decision to allow adoption of Optional Protocol No. 6 of the European Convention on Human Rights. Further important characteristics of the new Penal Code were the reductions in the penalties applicable to a number of offences, the decriminalization of a range of other offences, and the introduction of non-custodial sentences. Following the removal of the death penalty, the authorities had been faced with the problem of establishing appropriate conditions for the detention of prisoners sentenced to death before the 1997 moratorium, and also others sentenced to life imprisonment for crimes which had previously carried the death penalty. All outstanding cases had now been reviewed under the new legislation, and no executions had taken taking place in 2000. In that year, 140 death sentences had been commuted. The Prison Authority, formerly attached to the Ministry of Internal Affairs, was now independent and had responsibility for over 500 persons sentenced to life imprisonment, including many sentenced to death under the provisions of the previous Penal Code. The new Code applied to all sentences which had formerly violated the individual's right to life.

23. Mr. GARNIK (Ukraine), in reply to question 11, said that the transport of women abroad for purposes of sexual exploitation was a matter of considerable concern in Ukraine. To prevent such trafficking and punish those found guilty of it, legislation had been introduced in 1998 making such action a criminal offence. Article 149 of the new Penal Code laid down the penalties for procuring persons for purposes of prostitution and article 304 contained special provisions making it an offence to incite young people to engage in criminal activity. Charges of illegal trafficking in persons had been brought in 204 cases, of which 13 had so far gone to court.

24. Ms. KARPACHOVA (Ukraine), also replying to question 11, said that the Ombudsman's Office regarded the prevention of the contemporary form of slavery resulting from the trafficking in women and girls as a matter of priority. In 1998, as a member of the legislature, she had worked on the draft law, later incorporated in the Penal Code, which had made trafficking in persons an offence. The new legislation was designed to implement all the relevant international instruments. The President of Ukraine had given full support to the efforts of the Office to

combat those practices. It had taken a long time for the problem to be officially recognized, but joint studies carried out with OSCE and the Council of Europe had convinced political leaders that trafficking in persons had become a transboundary problem. It was after the fall of the Berlin wall that Ukraine had become a transit area for international trafficking in people. Since the adoption of the new legislation, the Ombudsman's Office had transmitted three clear-cut cases to the courts and sentences had already been handed down. Eighty-four persons had been found guilty, of whom 44, she was sorry to say, were women. In 2000, at a meeting in Palermo, the Ukrainian Ministry of Internal Affairs had signed 14 international agreements with authorities of various other countries with the aim of combating that international crime. A national coordinating committee had been set up within the Ombudsman's Office, including representatives of the Ministries of Foreign Affairs, Labour and Internal Affairs and members of Interpol. The experience of that independent body had been shared with the Council of Europe, OSCE and the European Union, and with the Department of the Interior of the United States of America.

25. Mr. GARNIK (Ukraine), in reply to question 12, said that all complaints concerning the conduct of police officers and other law enforcement officials were referred to the Office of the Procurator-General which carried out a preliminary investigation. Persons suffering ill-treatment were entitled to sue for compensation for moral and material damage. Complaints of that kind had been made and a number of cases were currently being prosecuted.

26. Turning to question 13, he said that the new Penal Code included a number of provisions aimed at preventing arbitrary arrest and unjustified detention. Article 373 of the Code established penalties for obtaining evidence under duress, while articles 364 and 365 imposed penalties for officials who exceeded their authority. Penalties in the case of law enforcement officers were more severe than in the case of the misuse of power by other officials.

27. In reply to question 14, he said that article 120 of the Penal Code set the period allowed for pre-trial detention at two months. Under the Code, the period could be extended by the regional procurator to three months and by the procurator of the oblast to six months. The Deputy Procurator-General could extend the period to 12 months and the Procurator-General himself to 18 months. Since June 2001, because of changes in legislation and in the Constitution, the duration of pre-trial detention had been set by the competent court. As an example of law and practice in Ukraine, he said that, in the year 2000, some 292,000 persons had been accused of criminal offences. Only about 30 per cent of those persons had been held in pre-trial detention.

28. Replying to question 15, he said that articles 9 and 10 of the Penal Code guaranteed the human rights of persons suspected of committing an offence and were consistent with article 9 of the Covenant. Article 103 of the Code required the necessary administrative steps to be taken at the investigation and interrogation stages in order to elicit evidence of the crime and identify the perpetrator. Evidence for the prosecution must be communicated to the Procurator's Office.

29. Ms. KARPACHOVA (Ukraine), in reply to question 16, said it must be acknowledged that problems existed regarding current conditions of detention in Ukrainian prisons. The department responsible for the execution of sentences was an independent body directly subordinate to the Prime Minister's Office. Decisions were thus taken at a high level. Her own

mandate as Ombudsman included protecting the rights of the accused and of persons held in places of detention. She visited prisons regularly and was able to report that problems of overcrowding were gradually being dealt with. During the Soviet period, access to air and light had been seriously restricted, but difficulties in that connection were now being solved with the removal of much of the window grating. Some 220,000 persons were currently being held in places of detention, and of those 532 were persons who had been sentenced to death and were now, on the basis of the new Penal Code, serving life imprisonment.

30. Overuse of the system of pre-trial detention was a serious problem in Ukraine. Attention was drawn to it in the first of the texts she had handed to the Committee and it was noted in her second report that it remained a matter of concern. Arbitrary detention was ordered in the case of many persons suspected of committing an offence. In Kiev, one out of every two persons suspected of committing an offence was subjected to detention. It was no wonder that there was a problem of prison overcrowding in that city

31. Mr. PASENIUK (Ukraine), replying to question 17, said that Ukraine had ratified the United Nations Convention on the Rights of the Child in 1986. A new programme, "Children of Ukraine", had been instituted by the President and, in 1996, the Cabinet of Ministers had issued a decree implementing the Convention and other United Nations instruments relating to children. The Government's annual report on the situation of children in Ukraine outlined the structure of the penal system as it concerned minors. There were currently in operation 11 rehabilitation centres for juvenile offenders between the ages of 14 and 18; they currently housed 2,800 such offenders. On the advice of experts from the Council of Europe, care had been taken to ensure that the legislative basis for the centres did not breach the terms of the Convention on the Rights of the Child or the Beijing Rules regarding minimum standards for the detention of prisoners and other international instruments of that kind. Basically, the aim of the centres was to educate the young detainees and to provide physical and moral training that would enable them to re-enter society equipped to perform useful and socially acceptable work. To that end, they were given vocational training, with income from the proceeds of their work helping to defray the centres expenses. All minors in detention received a general education. All the centres had schools operating at the secondary level and teenagers received several years of public education. Most of the minors in detention were currently receiving a full education and 400 of them a partial education. In all, training was being provided in over 20 trades and, on their release, the minors were given a certificate testifying to their skills. Cultural and leisure activities and sports competitions were organized.

32. He believed that, with those remarks, his delegation had provided exhaustive answers to all the questions in the first half of the list of issues. Its members were, of course, ready to answer any additional questions from members.

33. The CHAIRPERSON said that the floor was now open for questions.

34. Mr. KLEIN said that he had been privileged to participate in the discussion of the fourth report of Ukraine and was glad to take part now in the consideration of the admirably prompt fifth report and the delegation's exhaustive replies to the questions in the list of issues.

35. An example of the considerable progress made in the human rights situation in Ukraine since the fourth report was the new Constitution, especially those articles in it which dealt with basic human rights. He had been particularly struck by its article 3 (2) stipulating that human rights and freedoms and their guarantees determined the essence and orientation of the activity of the State. It was rare indeed for a State to define its main function as affirming and ensuring human rights and freedoms. However, human rights under international law needed to be unequivocally included in that concept. It was not clear from the text of the Constitution whether the terms of the Covenant had direct effect in the same way as the provisions of the Constitution itself.

36. In connection with question 3 of the list of issues, he asked whether there was a set procedure for implementing the views of the Human Rights Committee under the Optional Protocol and for implementing its concluding observations. Who was responsible for informing the other branches of government of those views and observations? He noted that much of the report focused on the question of national minorities. Its paragraph 17 stated that, under article 3 of the Ukrainian Act on National Minorities in Ukraine, national minorities included groups of citizens of Ukraine who were not Ukrainian by nationality but demonstrated a feeling of national self-awareness and community among themselves. Two groups, however, seemed excluded from that concept: citizens of Ukraine who were in fact of Ukrainian ethnicity, and all non-citizens. While it was understandable that citizens of Ukrainian ethnicity should not be regarded as belonging to a national minority, it was not clear what regime governed citizens of the State who belonged to a religious minority. Paragraph 778 at the end of the report made fleeting reference to religious minorities, but he would be grateful for more specific information concerning what was being done for such minorities, whether or not their members were citizens. The fact that all non-citizens were excluded from the above-mentioned was particularly important in the case of the Crimean Tartars, most of whom had not yet acquired Ukrainian citizenship. Did they enjoy minority status in regard to the protection of their human rights? What was the result of the deliberations on questions of indigenous peoples, said in paragraph 765 to be under examination? Would legal status of the Crimean Tartar people be placed on the same level as that of national minorities? The situation of linguistic minorities, (referred to in article 27 of the Covenant), which were not at the same time national minorities was also unclear. Was there any legal regime to protect those minorities?

37. Mr. HENKIN commended the promptness of the report and welcomed the improvements made since the submission of the previous report.

38. The issue that caused him most concern was the treatment of minorities. While he was impressed by the assurance given that the Government did not practise discrimination, whether ethnic, racial or religious, it was clear that discrimination ran deep in Ukrainian culture and that it was continuing. It was true that some efforts were being made, notably by educating the public in the Roma culture and by rebuilding synagogues, but it would take more than that to change popular prejudices. In the same way, attitudes towards women were still to some extent characteristic of a patriarchal society, and there should be stronger efforts by the Government to bring about the necessary cultural change.

39. It was not clear to him whether the Crimean Tartars were citizens and, if not, whether they were given the opportunity to obtain citizenship. Did they have the same rights as others to vote in national and local elections? Lastly, was the Government satisfied that expelled asylum-seekers would not be subjected to repression in their own countries, and that their expulsion would be consistent with the principle of non-refoulement, which was now well established in international law?

40. Mr. RIVAS POSADA commended the report, and the detailed information given by the delegation on the constitutional and legal reforms recently introduced. However, it was important to bear in mind that the Committee's mandate covered not only the adoption of measures to protect human rights, but also the practical implementation of those measures.

41. He would appreciate clarification concerning the extent to which the Ukrainian Act on States of Emergency, referred to in paragraph 73 (v) of the report, complied with article 4 of the Covenant. While full details had been given both in the report and in the oral statements of measures restricting individual freedom that could be introduced following the declaration of a state of emergency, nothing had been said about what legal remedies were available to citizens if they considered that their fundamental rights had been violated by such measures.

42. He too would be glad of more information on what was to be understood by "national minorities", since it would appear that other minorities had more limited rights. Although laudable measures had been taken to protect the cultural identity of certain minorities, notably the Roma and the Crimean Tartars, he would like to know how their rights under article 25 of the Covenant were guaranteed.

43. Lastly, he reiterated his concern about the number of persons held in detention until a final decision on their case had been taken by the courts, and about the duration of such detention. It would seem that the situation in that respect had not been sufficiently improved, and might constitute a violation of the provisions of the Covenant.

44. Mr. AMOR said the report was commendably copious, although occasionally enigmatic in that it was not always clear how the material submitted related to particular articles of the Covenant. He thanked the delegation for the detailed responses it had given.

45. He would welcome clarification as to the place of the Covenant in the hierarchy of legal norms and how it was applied in practice. The impression had been given that the status of the Covenant was equivalent to that of law, but laws could, according to circumstances, either derogate from or override the provisions of the Covenant. Could the Covenant be invoked directly before the courts, and if there was conflict between a law and the provisions of the Covenant, did the judge have authority to rule that the latter would prevail? He remained somewhat perplexed about the status of women in Ukraine, particularly in view of the fact that, although some 63 per cent of women were said to have completed both intermediate and higher education, they still accounted for only 14 per cent of employees in the public service and only 8 per cent of members of parliament.

46. The report gave no statistics on the proportion of minorities, whether national or non-national, in Ukraine. In particular, the information given in paragraph 780 of the report

could have been elaborated on in order to help the Committee understand the problems faced by minorities, particularly at local level. With reference to paragraph 73 (f) of the report, article 34 of the Constitution, which listed the grounds for restricting the exercise of the right to freedom of expression, seemed particularly wide in scope. Concepts such as "public order" or "national security" were open to varying interpretations, and he would like to know what interpretation was given by the Ukrainian authorities to such concepts, particularly that of "preventing disturbances or crimes".

47. He had understood from the replies given that forced labour no longer existed in Ukraine, but noted from paragraph 146 of the report that everyone sentenced to deprivation of freedom was "obliged to work", which would seem to constitute forced labour. The report contained very little information on guarantees relating to the expulsion of aliens, which would seem to be incompatible with the Covenant. Lastly, on the subject of liberty of movement, he would like to know why there was an obligation for citizens to register. Did that not constitute a restriction on liberty of movement and freedom to choose a residence, as defined in article 12?

48. Mr. SCHEININ congratulated the delegation on the timely submission of a very informative report and on the positive developments in the protection of human rights in Ukraine.

49. He too would like more clarification concerning the status of the Covenant in domestic law. While provisions which closely resembled those of the Covenant had now been incorporated in the Constitution and in domestic law, the courts were reportedly reluctant to give effect to them. He would be interested to know the number of cases in which reference had been made, for instance, to articles 14, 7 and 10 of the Covenant, and whether such references had had any practical effect on the outcome.

50. As to the system of criminal justice, the report went into great detail on many points but was very brief in respect of article 7, which was central to the Covenant. That was all the more serious in that torture was apparently widespread in Ukraine. According to the International Helsinki Federation Yearbook, Ms. Karpachova, in her capacity as Parliamentary Ombudsman, had stated that 30 per cent of prisoners were subjected to torture. Other reports alleged that torture was regularly used as a means of obtaining confessions. Was it still the case that domestic law did not explicitly declare evidence obtained under torture to be inadmissible? If a defendant in a criminal trial alleged that his confession had been obtained by such means, was the trial discontinued and a separate investigation undertaken?

51. There was evidence in the report of a degree of misunderstanding as to the obligations arising under article 9. With reference to article 9.2, he would like to know how much time elapsed between a person's de facto apprehension and his being informed of the reasons for his arrest and the charges against him. It was also crucial to know what interpretation was given to the words "shall be brought promptly before a judge" in article 9.3, since rapid judicial review was one of the most effective ways of preventing torture or eradicating it where it existed. Concerning article 9.4, the report referred only to criminal cases, whereas in fact that article also covered various forms of administrative detention. What forms of administrative detention existed in the Ukraine, for instance in relation to asylum-seekers, alcohol or drug abusers, and vagrants, and what provision was made for judicial review in such cases? Was the limit of

pre-trial detention still set at 18 months, and was it still the case that it could be extended to as much as three years? Where such detention lasted longer than the period prescribed by domestic law, was there a right to enforceable compensation?

52. Lastly, with regard to female prisoners or females suspected of committing an offence, was there a specific gender approach to issues of detention and torture prevention?

53. Mr. YALDEN said the report, although thorough and at times refreshingly candid, generally gave insufficient detail to allow the Committee to judge whether progress was being made in the practical implementation of the Covenant.

54. Concerning question 4 of the list of issues, he would like more information concerning the response of the Administration to the Ombudsman's recommendations. On question 6, he too was concerned at the apparent exclusion of various groups from the category of "national minorities". There was little in the report about the participation of minorities in national life, particularly in regard to employment in public service and in the private sector. More figures should have been provided concerning the situation of women in order to allow the Committee to judge what had been done to further their full integration into Ukrainian society. Similarly, more information should have been given on the treatment of prisoners, and specifically on the number of complaints that had been found to be admissible and on action that had been taken to follow them up. Statistics for deaths in prison, the possible causes of such deaths and the incidence of torture would also have been valuable.

The meeting rose at 6.05 p.m.